

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-415

FEBRUARY TERM, 2005

SMM Realty, Inc.	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Superior Court
	}	
Sisters & Brothers Investment Group	}	DOCKET NO. S0504-02 CnC
	}	

Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

SMM Realty, Inc. appeals from a superior court judgment on SMM’s breach of contract claim, arguing that the court erroneously construed an addendum to the parties’ purchase and sales contract. Although the judgment is in its favor, SMM argues that the amount is too small. We affirm the court’s decision, but remand the matter for consideration of SMM’s claim for prejudgment interest.

SMM owned a service station in Winsooki. In October 1998, SMM agreed to sell the property to defendant Sisters & Brothers Investment Group for \$232,000. The property was encumbered by substantial debt. To reduce the encumbrance, a principal of Sisters & Brothers began purchasing the debt at a discount. After purchasing an outstanding mortgage on the property held by Chittenden Bank, Sisters & Brothers filed a foreclosure action in Chittenden Superior Court. Judgment was entered against SMM on the foreclosure, and a writ of possession issued in December 1999.

While the foreclosure action was pending, SMM and Sisters & Brothers entered into an addendum agreement concerning the sale of the property. The addendum’s first paragraph restated the parties’ intent to consummate the sale, this time after the judgment of foreclosure became final. The second paragraph is the focus of the parties’ dispute here. It provides:

It is intended that any amounts paid by Sisters and Brothers . . . to SMM Realty, Inc. pursuant to the purchase agreement referred to above shall be reduced by all expenses incurred by Sisters and Brothers . . . in obtaining clear title and by the full amounts now or previously owed by SMM Realty, Inc. . . . on any liens, encumbrances or mortgages on the property which existed at the time the Purchase and Sale Contract was entered into or thereafter.

(Emphasis added.) The trial court interpreted the agreement to mean that the purchase price would be offset by (1) the expenses Sisters & Brothers incurred to clear title to the property; and (2) the amount of all debt outstanding at the time the parties signed the purchase and sales agreement, as well as any debt incurred after the signing. The court deducted a total of \$181,806.75 from the purchase price and entered judgment for SMM in the amount of \$50,193.25. SMM appealed the judgment to this Court.

On appeal, SMM raises three issues: (1) the court erroneously construed the addendum agreement; (2) the court’s

key findings supporting its construction of the agreement are clearly erroneous; and (3) SMM was entitled to prejudgment interest on the \$50,193.25 judgment. We address each claim in turn.

SMM argues that the addendum agreement does not permit a deduction for the fair value of debt encumbering its property, rather that it authorizes a deduction in an amount equal to the actual cost Sisters & Brothers incurred to clear title. For example, SMM's mortgage from the Chittenden Bank secured a debt of \$108,000 (exclusive of interest and penalties), but Sisters & Brothers paid the bank only \$80,000 to purchase the mortgage. SMM's interpretation of the addendum would permit Sisters & Brothers to deduct only \$80,000 from the purchase price and not the full amount SMM owed on the mortgage. SMM contends that the addendum agreement does not allow Sisters & Brothers to "discharge an indebtedness at a discount, be reimbursed for its expenses in arranging the discount, and *in addition*, be credited for the gross amount of the debt."

Contract interpretation requires giving force to the terms the parties used to express their intent. New England P'ship v. Rutland City Sch. Dist., 173 Vt. 69, 79 (2001). "Moreover, contracts are to be construed, if possible, so as to give effect to every material part." Vt. State Colls. Faculty Fed'n v. Vt. State Colls., 141 Vt. 138, 143 (1982).

The contract in this case allows Sisters & Brothers to reduce the purchase price by "all expenses incurred by Sisters and Brothers . . . in obtaining clear title." That language is consistent with SMM's position here that only actual expenses incurred to clear title should offset the purchase price. The contract does not end there, however. The language goes on to permit a deduction for "the full amounts now or previously owed by SMM Realty, Inc. . . . on any liens, encumbrances or mortgages on the property which existed at the time the Purchase and Sale Contract was entered into or thereafter." The "full amounts now or previously owed by SMM . . . on any liens, encumbrances or mortgages" existing when the parties signed the purchase and sale agreement means the face value of the outstanding debt SMM owed to its lenders or creditors when the parties signed the original sales agreement. Describing the last sentence as the critical one, the trial court interpreted the addendum consistent with Sisters & Brothers's position, concluding that SMM's interpretation would render the last sentence surplusage. We agree. Contrary to SMM's position, the contract does not forbid Sisters & Brothers from purchasing SMM's obligations at a price lower than the face value of the debt. The trial court interpreted the agreement according to its terms, and no error appears.

SMM next argues that certain critical facts in the court findings are clearly erroneous and led to its misinterpretation of the addendum agreement. In particular, SMM claims that the court clearly erred by finding that the title search Sisters & Brothers performed revealed "liens which may have exceeded the gross sales price of \$232,000." SMM asserts that the finding is clearly erroneous because SMM had approximately \$50,000 in equity in the property. SMM also claims that a rhetorical question in the court's order—"Why would [Sisters & Brothers] expend effort and capital to obtain one or another release, when the benefit would accrue only to the seller?"—demonstrates the court's misapprehension of Sisters & Brothers's motivation for reducing the encumbrances. SMM argues that the erroneous finding on SMM's equity, combined with the court's rhetorical question, formed the basis for the court's legal conclusion about the contract's meaning. We find no merit to this argument because it does not accurately reflect the trial court's decision. The trial court based its interpretation of the parties' agreement on the language the parties used to express their intent. The addendum's language contains two separate bases for reducing the purchase price: expenses incurred plus the full amounts owed by SMM. As the trial court found, those amounts are "obviously different [from] 'net amounts paid by buyer,' the reading advanced here by [SMM]." Nothing in the court's order suggests that its conclusion relied on either the finding SMM challenges or Sisters & Brothers's motivation for entering the addendum agreement.

Finally, SMM argues that it was entitled to prejudgment interest because it prevailed on its breach of contract claim. This Court's case law permits an award of prejudgment interest to compensate for damages caused by the "detention of money due for breach or default." Agency of Natural Res. v. Glens Falls Ins. Co., 169 Vt. 426, 435 (1999) (quotations omitted); see also Greenmoss Builders, Inc. v. King, 155 Vt. 1, 8 (1990) (reaffirming that in contract dispute over payment of money, prejudgment interest is a legal right). The court's judgment demonstrates that Sisters & Brothers owed money to SMM pursuant to the parties' agreement. The trial court did not address SMM's claim for interest, however. We do not know whether it rejected SMM's claim or simply overlooked it. Therefore, we remand SMM's claim for prejudgment interest for the trial court's determination in the first instance.

The July 7, 2004 Findings, Conclusions of Law, and Notice of Decision is affirmed. The matter is remanded for consideration of plaintiff's claim for prejudgment interest.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),  
Specially Assigned